

FOR THE DEFENSE

The Newsletter for the
Maricopa County Public Defender's Office

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SELF-DEFENSE/HUNTER INSTRUCTION

The Key to Acquittal

By James P. Cleary

American legal education is devoted to the study of cases to prepare a person for the practice of law. In law school students brief cases for professors and regurgitate holdings of cases in order to achieve a degree that would enable them to practice law. Often times students can accurately reiterate for law professors and bar examiners various principles. However, it is a rare case where a legal principle can be seen to have the actual impact on citizens and juries that brings to life the wisdom of any legal rule.

The recent superior court case of State of Arizona v. Curtis Dorman, CR-87-05022, illustrates how a legal rule or

principle can have an actual impact on a decision making process by a jury.

On Memorial Day weekend in 1987, Curtis Dorman and friends were bar hopping in the Phoenix area. At the last bar they were at, near closing hours, they were introduced to a man named Steven who invited Curtis and his friends back to his house for continued partying. Curtis was quite intoxicated, in his own words "wasted", by the time they reached Steven's apartment. Ultimately Curtis' friends departed Steven's apartment and Curtis was invited to stay at Steven's, primarily due to Curtis' intoxication.

Curtis woke in the middle of the night with Steven hovering over him in the bedroom. Curtis testified that Steven was naked and was attempting to sexually assault him. A fight ensued throughout the apartment and Curtis found a knife in the kitchen which he used to defend himself against Steven. Physical evidence from the scene revealed a significant struggle occurred.

Steven's body was found outside the apartment by neighbors in the middle of the night. An autopsy revealed that Steven died from multiple stab wounds. Curtis was arrested two days later and advised police as to the circumstances surrounding the fight between Steven and him. Curtis was charged with first degree capital murder.

Curtis' case proceeded to trial in superior court in July, 1988. At trial Curtis asserted defenses of self-defense and crime prevention.¹ Following trial, the jury began deliberations. The jury deliberated four complete days and on the end of the fourth day found Curtis guilty of manslaughter, a dangerous offense. The trial court at the time for settling of instructions refused to give Curtis' requested instruction detailing for the jury that the burden of proof was upon the State to disprove Curtis' asserted defenses of self-defense and crime prevention. This instruction is known as the Hunter instruction based upon the holding in the case of State v. Hunter, 142 Ariz. 88, 688 P.2d 980 (1984).²

Curtis was sentenced to an aggravated term of 15 years in the Department of Corrections. Curtis appealed. On appeal the Arizona Court of Appeals, Division One, rejected Curtis' argument that the trial court erred by refusing his requested jury instruction.³ The Court of Appeals reasoned that the specific instruction on the burden of proving self-defense is not required when the issue is substantially covered by other instructions.

(cont. on pg. 2)

Further review was sought from the Arizona Supreme Court. The Arizona Supreme Court granted review and on February 5, 1991, held that the trial court's failure to give the Hunter instruction at trial was reversible error. *See, State v. Dorman*, 79 Ariz. Adv. Rep. 7 (1991). The Arizona Supreme Court in its discussion of the case delineated between fundamental error and reversible error. It found that the Hunter instruction had been specifically requested and the trial court's refusal to give it was reversible. While it discussed other cases where it found that it was not fundamental error to refuse to give the instruction, the Supreme Court reasoned that where a defendant specifically requests such an instruction, in view of all the facts and circumstances, it is reversible error to fail to give that instruction.

The supreme court criticized the trial court for its rejection of the Hunter instruction. The trial court had decided the instruction was cumulative and potentially confusing. In fact, the Supreme Court found the requested instruction noncumulative and crystal clear. It held that it was an appropriate instruction under precedent and clearly delineated for a trial jury the burden of the State to disprove an asserted defense of justification.

Curtis Dorman went to trial again in July of 1991. The evidence was essentially the same. The instructions were the same, with the exception that now he was only tried on a manslaughter charge. Further, the court, following the direction of the Supreme Court, did give the Hunter instruction. The jury deliberated for less than thirty minutes and Curtis Dorman was acquitted.

The Dorman case reveals the significant impact a jury instruction can have upon the jury. In Dorman's first trial the jury deliberated four days over the evidence and the law relative to his asserted defenses of justification due to self-defense and crime prevention. In that trial the jury was not told that it was the State's burden to prove, beyond a reasonable doubt, that Mr. Dorman did not act in self-defense, or for crime prevention. In the second trial, upon proper instruction that it was the State's burden to show beyond a reasonable doubt that Mr. Dorman did not act in self-defense, the jury acquitted him within thirty minutes. It would seem that such an instruction illustrating for a jury the correct proportion of the burden of proof can impact upon an outcome of a case.

The Dorman case history is instructive on the value and necessity of spending appropriate time on fashioning jury instructions. This is especially so in cases where a defendant asserts a justification defense. Much has been written in Supreme Court opinions concerning the various justification defenses found in Chapter 4 of Title 13 of the Criminal Code. The Court has distinguished between self-defense and use of deadly physical force, physical force and deadly physical force in crime prevention.⁴ However, it would seem that, given the result in the Dorman retrial, an important aspect to consider in justification defense cases is the Hunter instruction. A Hunter instruction clearly telegraphs to a jury the burden upon the State to disprove a justification defense. A prosecutor in a justification defense case not only must prove that a defendant committed a certain act and the defendant had a certain mental state, but also the prosecutor must disprove an asserted mental state or actions taken for a crime prevention reason. Any prosecutor would agree this is a most difficult task. Clearly the second Dorman jury

found that it is a burden, consistent with due process, that requires acquittal when the prosecution does not garner sufficient facts and evidence to support its theory.

Endnotes:

1. Chapter 4 of the Criminal Code authorizes several justification defenses. Use of force is authorized for: self-defense, 13-404 (nondeadly force) and 13-405 (deadly force); defense of a third person, 13-406; defense of premises, 13-407; defense of property, 13-408; law enforcement, 13-409 (nondeadly force) and 13-410 (deadly force); and crime prevention, 13-411. A crime prevention defense is unique because the statute declares that there is no duty to retreat and a person may use deadly force, and is presumed to be acting reasonably. *See, State v. Korzep*, 165 Ariz. 490, 799 P.2d 2831 (1990).

2. The Supreme Court held in 1977 and 1978 that a trial court commits reversible error by refusing a defendant's requested instruction that the state has the burden of proving that a defendant did not act in self-defense. *State v. Garcia*, 114 Ariz. 317, 560 P.2d 1224 (1977); *State v. Denny*, 119 Ariz. 131, 579 P.2d 1101 (1978). In *State v. Hunter*, 142 Ariz. 88, 688 P.2d 980 (1984), the Supreme Court held that failure to properly instruct the trial jury on the state's burden to disprove self-defense can be fundamental error. Hence, Hunter has gained prominence for its pronouncement on the fundamental nature of an instruction detailing the state's burden to disprove an asserted defense of justification.

The term "Hunter instruction", which has crept into the language of Arizona jurisprudence, is somewhat of a misnomer. Hunter did not fashion an instruction -- it merely condemned one. "Hunter instruction" has come to mean an instruction like the one disapproved in Hunter. Hunter held that the giving of Former RAJI 4-01 was error in a self-defense case because the instruction was perceived to impermissibly shift the burden of proof of self-defense to the defendant. *Hunter*, 142 Ariz. at 90, 688 P.2d at 982. *See, State v. Diaz*, 92 Ariz. Adv. Rep. 91 (1991).

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In Dorman, the court set out an error-free "Hunter instruction". That instruction is:

"If evidence was presented that raises the issue of self-defense [or some other justification], the state has the burden of proving beyond a reasonable doubt that the defendant did not act in self-defense. If the state fails to carry their burden, then you must find the defendant not guilty of the charge." State v. Dorman, 79 Ariz. Adv. Rep. 7, 8 n.1 (1991). See also, State v. Duarte, 165 Ariz. 230, 232, 798 P.2d 368, 370 (1990).

3. State v. Dorman, No. 1 CA-CR 88-1077, slip op. (App. Apr. 12, 199) (mem).

4. See, State v. Korzep, 165 Ariz. 490, 799 P.2d 831 (1990); State v. Thomason, 162 Ariz. 363, 783 P.2d 809 (Ct.App. 1989).

Editor's Note:

The public defender that represented Curtis Dorman at his trial in 1987 and at his 1991 acquittal is James P. Cleary.

SIDE BAR:

An important practice point emphasized in public defender training is that one of the first things you can do to start preparing your case is to thoroughly review the statute under which the client is charged and to obtain from the Recommended Arizona Jury Instructions (RAJI) (Criminal) copies of all pertinent jury instructions. Reviewing the instructions and important cases upholding the instructions often can generate ideas for defenses and appropriate areas to explore in interviews. Such review also can reveal anticipated case problems and suggest creative instructions. Analyzing your case from the perspective of the jury instructions that will ultimately be given is an excellent way to insure that your theory of the case is uniform and that all other areas of defenses and evidentiary issues are being fashioned consistently with that theory. Further, by figuring out these issues early, you are much more likely to be able to effectively change the theory of the case if the evidence and legal issues are not going to support it.

WARRANTLESS ARRESTS

By James R. Rummage

On May 13, 1991, the United States Supreme Court clarified the right of an incarcerated defendant to have a probable cause hearing promptly after a warrantless arrest -- a right that apparently has been ignored in Arizona since the Supreme Court announced it sixteen years ago. In County of Riverside v. McLaughlin, ___ U.S. ___, 111 S.Ct. 1661, 114 L.Ed.2d 49 (1991), a civil suit filed by an incarcerated defendant, the limited States Supreme Court held that jurisdictions which provide a "judicial determination of probable cause" within 48 hours of a defendant's arrest will be immune from systemic challenges to the promptness of that probable cause determination. On the other hand, if an arrestee does

not receive a probable cause determination within 48 hours, the burden is on "the government to demonstrate the existence of a bona fide emergency or other extraordinary circumstances". 111 S.Ct. at 1670. Delays resulting from consolidating pretrial proceedings do not qualify as extraordinary circumstances, nor do weekends. Id.

The primary question presented by McLaughlin, at least as far as our practice is concerned, is what sort of proceeding is required within 48 hours? The question may be answered by referring to Gerstein v. Pugh, 420 U.S. 103, 95 S.Ct. 854, 43 L.Ed.2d 54 (1975), the case upon which McLaughlin is based. In McLaughlin, the Supreme Court merely interpreted Gerstein, which had held that each state "must provide a fair and reliable determination of probable cause as a condition of any significant pretrial restraint of liberty, and this determination must be made by a judicial officer either before or promptly after arrest". 420 U.S. at 125, 95 S.Ct. at 869. All that McLaughlin has done is to define "promptly" as meaning "no more than 48 hours".

In Gerstein, the Court held that the hearing required by the Fourth Amendment can be quite informal. According to the Court:

[T]he full panoply of adversary safeguards -- counsel, confrontation, cross-examination, and compulsory process for witnesses. . . .

. . . are not essential for the probable cause determination required by the Fourth Amendment. The sole issue is whether there is probable cause for detaining the arrested person pending further proceedings. This issue can be determined reliably without an adversary hearing. The standard is the same as that for an arrest. That standard -- probable cause to believe the suspect has committed a crime -- traditionally has been decided by a magistrate in a nonadversary proceeding on hearsay and written testimony, and the Court has approved these informal modes of proof.

Id. at 119 & 120, 95 S.Ct. at 866. McLaughlin does not in any way alter the nature of the hearing discussed in Gerstein.

Gerstein specifically held that, "Because of its limited function and its nonadversary character, the probable cause determination is not a 'critical stage' in the prosecution that would require appointed counsel." Id. at 122, 95 S.Ct. at 867. It is perhaps important to distinguish between a Fourth Amendment probable cause determination and our preliminary hearing, and Gerstein has done that. "The Fourth Amendment probable cause determination is addressed only to pretrial custody." Id. at 123, 95 S.Ct. at 867. It is not addressed to the question of whether a defendant may be prosecuted. Id. at 119, 95 S.Ct. at 865. In fact, Gerstein states, "[W]e adhere to the court's prior holding that a judicial hearing is not prerequisite to prosecution by information." Id.

(cont. on pg. 4)

One issue that does not appear to be directly addressed in Gerstein is whether or not the arrestee has the right to be present when the probable cause determination is made. McLaughlin creates some confusion because it states, "Under Gerstein, warrantless arrests are permitted but persons arrested without a warrant must promptly be brought before a neutral magistrate for a judicial determination of probable cause. Id. at 114." 111 S.Ct. at 1668 (emphasis added). Nowhere on page 114 of Gerstein does it say that the arrestee must be "brought before" the magistrate, but obviously we can say that the Supreme Court reads Gerstein that way.

Despite the holding in Gerstein, the courts in Maricopa County have not been providing the Fourth Amendment probable cause determination required by that case. Defendants incarcerated pursuant to a warrantless arrest have routinely had to wait up to 10 days or more after arrest before a judicial determination of probable cause. That recently changed in response to the McLaughlin case. Beginning September 3, 1991, the initial appearance magistrates have been required to make a Fourth Amendment probable cause determination in conjunction with the initial appearance of any defendant who is arrested without a warrant. This determination will almost always be made based on the written remarks of the arresting officer. ^

SIDE BAR:

Arresting officers use a "Form 4" to record their findings regarding probable cause for arrests made without a warrant. They are instructed to complete the Form 4 in its entirety and to include any other pertinent information in the summary section. If a finding of probable cause is made, the judge/commissioner checks one of two boxes to so indicate. The Form 4 may contain information that can be used later to assist the client's defense, either as impeachment or mitigation. For example, one section asks the officer to check whether "there is any indication the defendant" is "an alcoholic", "mentally disturbed", "an addict" or "physically ill". The Form 4 is retained in the court's file and should be examined as another source of information that may help the client.

BODY LANGUAGE AND THE RECORD

Our first issue featured a practical article by Appellate Attorney James Kemper on preserving objections for the record. Last month, Russell Born wrote an excellent piece on "A View From the Box Seats", his observations from the jury box while watching mock trials. Kemper's article focused on getting the objection on the record and Born's article on making sure the jury can see charts and other exhibits. There is an overlapping theme here. So this may sound like a broken record on making a record but here it is. The record is blind when it comes to body language. It usually happens like this:

Q. How far away from Mr. Defendant were you standing?

A. From where I'm sitting to about there.

The witness is pointing. Everyone sees it in the courtroom. No follow-up questions are asked. No one will ever know from the record how far it was.

The succinct phrase, "let the record show . . ." or some other equivalent should be used to clarify every gesture that witnesses make. Such response-answers such as "over to about there", "about that long", "he was cut here and there was blood over there", or "this looks like it" become meaningless when read by an appellate attorney. By making sure that the record correctly points out the gesture or body language and generalized descriptions, you can make testimony into a coherent account to help the appellate attorney do his or her job. For instance:

Q. How far away from the defendant were you standing?

A. From where I'm sitting to about there.

Mr. Born: Your honor, let the record show that the witness is indicating to the edge of the jury box, a distance of about nine feet.

* * * * *

Q. When you saw Mr. Smith after the incident, did you see any bruises on his face?

A. Yes.

Q. Where were they?

A. He had a bruise here about that big and another one here not quite as large.

Mr. Johns: For the record, the witness is first indicating a bruise on the right cheek about two inches long and one on the right side of the neck.

Usually, at least during cross examination, you can shape your questions to avoid body language responses. However, now with instances where you may not have interviewed an alleged "victim", there may be times when you want to put the body language into the record without asking risky follow-ups. Moreover, young and hostile witnesses often use body language that needs to get into the record somehow. Make sure the record shows what is going on in the courtroom at times important to your case. CJ ^

POLICE DISPATCH LOGS

By Jerry M. Hernandez

Dispatch records often can assist in the preparation of our cases. Having worked as a police dispatcher in California, I am familiar with what police radio traffic goes over the air and the purpose of those transmission

Police dispatchers are responsible for the monitoring and coordination of all field units. Police officers usually begin their investigation by being sent to a particular location by a dispatcher. From that point on, field units must notify the dispatcher as to what transpires in the field. More importantly, they must convey to the dispatcher their appraisal of the investigation as it transpires. In essence, the dispatch log is a record of an investigation as it unfolds.

It is important to realize why the dispatcher is responsible for monitoring and controlling the units in the field. Officer safety, the most important facet of any investigation, requires that some central control monitor the field units, so that backup units can be dispatched to volatile situations. Additionally, dispatch logs serve to document an investigation for both internal and external sources.

In many cases, defense lawyers should subpoena dispatch records as soon as possible to assist in their investigation of their case. Most police agencies keep these records for only a limited time. Radio codes should also be subpoenaed so that the lawyer can decipher what is being said over the radio.

Dispatch records can be critical to any investigation. They reveal the time frames of the investigation. They also reveal the officer's response levels to and at the scene. Additionally, they may explain the officer's assessments of the critical phases of the investigation. If you need some help on a case where police dispatch logs should be obtained, give me a call at 440-2203. ^

LEGISLATIVE CHANGES

While everyone now knows about the Victims' Rights Implementation Act that becomes effective on December 31, 1991, several other legislative changes to the criminal code may affect our practice. Here's a summary of some other changes:

* Vulnerable Adults

Amends A.R.S. Section 13-3623, the child abuse provisions, to include "vulnerable adult(s)". A vulnerable adult is defined in A.R.S. Section 13-3623(A)(5) as "an individual who is eighteen years of age or older who is unable to protect himself from abuse, neglect or exploitation by others because of a mental or physical impairment". Like child cases, if the abuse is likely to produce death or serious physical injury and is done intentionally or knowingly, the offense is a class 2 felony. If alleged recklessly, it is a class 3 felony and if negligently a class 4 felony. Lesser penalties exist if the abuse is alleged under circumstances other than those likely to produce death. Other statutes in Title 46 have also been amended accordingly to conform, including duties of protective service workers and duties of various classes of individuals to report the abuse.

* Shoplifting

Increases dollar amounts in A.R.S. Section 13-1805(G) for basing a charge of shoplifting. Everything below \$250 is now a misdemeanor (previously \$100). Between \$250 and \$1,000 is now a class 6 felony. Anything greater than \$2,000 is a class 5 felony.

* Mentally Disordered Prisoners

Amends A.R.S. Section 31-226 to allow for the voluntary and involuntary "admission" of male prisoners to a mental health in-patient treatment facility or a licensed behavioral health facility operated by DOC. Also, allows females to be similarly transferred to the state hospital or DOC licensed behavioral health facility.

* Shock Incarceration

Amends A.R.S. Section 13-915 to allow DOC to use empty beds not being used by the courts for this program. Court-referred inmates have priority. Further, amends A.R.S. Section 41-1604.08 prescribing eligibility for DOC inmates in shock incarceration.

* Gangs

Amends A.R.S. Section 13-3102, making it a class 3 felony to shoot an occupied structure if it is related to "criminal street gang" activity "when it does not result in the death or physical injury of another person".

* Legislative History

Creates A.R.S. Section 41-1106 which requires the legislature to save an audiotape or verbatim transcription, or other similar accurate record of debate and testimony from committee hearings and the chamber floor for three years. Also establishes a committee to see about better ways to preserve legislative history.

* Juries

Amends A.R.S. Section 21-201 et seq. pertaining to juries. Changes the qualifications, including requiring that a juror not be currently adjudicated mentally incompetent or insane. Further allows the jury commissioner to create questionnaires to determine whether a person is qualified to sit as a juror.

* Home Arrest Fee

Amends A.R.S. Section 31-236 to allow Board of Pardons and Paroles to require a person on home arrest to pay less than the statutory minimum one dollar per day monitoring fee if it determines that the person is unable to pay the fee.

* Controlled Substances

Amends Arizona's Uniform Controlled Substances Act (A.R.S. Section 36-2512 et seq.) to conform with federal changes. CJ ^

ONE FOR THE ROAD

Motion to Sever

By Gary M. Kula

A motion to sever should be filed in all cases where a client is charged with a violation of both the impairment (under the influence) and the BAC over .10 within two hours provisions of the DUI statute. This motion is necessary to ensure a fair determination by the jury as to the guilt or innocence of your client on each of the separate offenses alleged.

A. THE CURRENT DUI STATUTE HAS ESTABLISHED SEPARATE OFFENSES FOR IMPAIRMENT AND BAC LEVEL

Under the previous DUI statute, the time of the offense for purposes of both the impairment charge and the BAC charge was the time of driving or being in actual physical control. On June 28, 1990, a number of modifications were made to the DUI statute. No significant changes were made to the impairment provisions. The statute still requires proof that the driver was impaired at the time of driving or being in actual physical control of a vehicle. However, a new BAC offense was created where it now must only be shown that the driver had a BAC greater than .10 within two hours of driving. The changes in the DUI statute have resulted in two separate offenses which occur at two separate points in time.

B. THE SEVERANCE STATUTE

Rule 13.4 of the Arizona Rules of Criminal Procedure provides for the severance of charges where it is necessary to promote a fair determination of the guilt or innocence of a defendant of each offense. The decision to sever offenses should be based upon a determination as to whether evidence, clearly relevant and admissible on one of the offenses, would be prejudicial to the defendant, confusing to the jury or even relevant to the other offense. In the context of a DUI trial, if the State cannot relate back the BAC to explain to the jury how the BAC is relevant to their determination of impairment at the time of driving, the net results are jury confusion and speculation. Absent relation back evidence, the jury lacks the information needed to make an intelligent and rational connection between the BAC test result and the issue of impairment. If the jury cannot make this connection, the defendant is prejudiced since there is no limiting instruction which can effectively prohibit the jury's improper consideration of the BAC in their decision on the issue of impairment. In order to preserve the integrity of the jury, and to promote fairness in their decision-making responsibilities, severance should be granted.

C. THE ADMISSIBILITY OF BAC AND HGN TEST RESULTS ON THE ISSUE OF IMPAIRMENT

There is no dispute that if a BAC test result is otherwise admissible and can be related back to the time of driving, the statutory presumptions can be given to and used by the jury in their determination of impairment. The Desmond decision allows the benefit of the presumptions only when the BAC is related back to the time of driving.

If the breath test cannot be related back and is inadmissible as evidence on the issue of impairment, then the quan-

tified HGN test results are also inadmissible. In the recent Arizona Supreme Court case of State of Arizona v. The City Court of the City of Mesa, 799 P.2d 855, 165 Ariz. 514 (Ariz. 1990) ("Lopresti") the Court held in part that absent a BAC test result, HGN results are only relevant in the same manner as other field sobriety tests. No testimony may be presented as to the accuracy of the test, to quantify BAC or to predict a BAC level above or below .10 when admitted on the issue of impairment.

D. FAILURE TO SEVER MAY RESULT IN INFRINGEMENT ON FIFTH AMENDMENT RIGHTS

In the trial on the issue of impairment the burden rests solely on the State to prove that the defendant's ability to drive was impaired to the slightest degree. The defendant need not testify. He or she is innocent until proven guilty.

In the trial on the issue of BAC level, the defendant may exercise his or her right to testify in order to use the affirmative defense that his or her BAC was below .10 at the time of driving. In order to present this affirmative defense, the defendant would need to disclose the information needed to relate the BAC back to the time of driving. If both the impairment and the BAC charges were being tried together, the very information presented by the defendant could then be used against him or her by the State to relate back the BAC result and present the jury with the statutory presumptions.

The failure to sever the trial on these two issues effectively puts the defendant in the position of either remaining silent and foregoing the affirmative defense or testifying in support of the affirmative defense and having his or her testimony used against him or her by the State on the impairment charge. To avoid placing the defendant in this predicament, severance should be sought in all cases to avoid the potential infringement on and compromise of the defendant's Fifth Amendment rights.

CONCLUSION

In modifying the DUI statute, the legislature created two separate DUI offenses which are committed at two separate points in time. A motion to sever should be filed on all cases and should be granted to prevent jury confusion and speculation. It is unrealistic to expect the jury to be able to distinguish between what evidence is relevant and not relevant on each of the two separate offenses. There is no limiting instruction which would adequately cure the prejudice suffered by the defendant where severance is not granted. Only with severance of the trials will the defendant be able to effectively exercise his or her rights under the Fifth Amendment. The end result will be that the jury is able to make a fair determination as to the guilt or innocence of the defendant on each of the separate offenses. ^

NOTE: Judge B. Michael Dann recently granted a motion by James Haas and Robert Doyle to bifurcate a felony DUI trial (A.R.S. Section 28-692.02(A)(1)). Separate trials will be held on the DUI and suspended license issues. The State has received a thirty day stay to pursue a special action.

AUGUST JURY TRIALS

July 29

Roland J. Steinle: Client charged with child molestation. Trial before Judge Hertzberg ended August 09. Defendant found not guilty of sexual conduct with a minor (2 counts) and guilty of child molestation (5 counts). One count of child molestation was dismissed. Prosecutor K. Maricle.

Anna M. Unterberger: Client charged with aggravated assault while on probation and manslaughter. Trial before Judge Hendrix ended August 13. Defendant found not guilty of aggravated assault and guilty of manslaughter. Prosecutor Miller.

August 01

Donna L. Elm: Client charged with felony DUI. Trial before Judge Galati ended August 06. Defendant found guilty. Prosecutor M. Spizzirri.

August 05

Karen Marie A. Noble: Client charged with burglary and theft (misdemeanor). Trial before Judge Hilliard. Defendant found not guilty of burglary and guilty of theft. Prosecutor G. McCormick.

Paul J. Prato: Client charged with burglary and trafficking in stolen property. Trial before Judge Dann ended August 09. Defendant found guilty on 2 counts and 2 counts dismissed. Prosecutor T. Doran.

Joseph A. Stazzone: Client charged with burglary. Trial before Judge Kamin ended with a hung jury August 08 (6 to 2 not guilty). Prosecutors S. Brewer and J. Garcia.

Jeffrey L. Victor: Client charged with sale of dangerous drugs. Trial before Judge Pro Tempore Rea ended August 06. Defendant found not guilty. Prosecutor P. Crum.

August 06

Todd K. Coolidge: Client charged with aggravated DUI. Trial before Judge Grounds ended August 08. Defendant found guilty. Prosecutor J. Walker.

August 07

Daphne Budge: Client charged with escape and theft. Trial before Judge Campbell. Court entered a judgment of acquittal on escape charge. Defendant found guilty of theft. Prosecutor D. Schlittner.

Douglas K. Harmon: Client charged with possession of marijuana for sale. Trial before Judge Katz ended August 12. Defendant found guilty. Prosecutor J. Walker.

Jeffrey L. Victor: Client charged with burglary. Trial before Judge Lester ended with a hung jury August 09. Prosecutor J. Charnell.

August 14

Stephen A. Avilla: Client charged with assault (misdemeanor). Trial before Judge Galati ended August 14. Defendant found not guilty. Prosecutor R. Puchek.

August 15

Thomas M. Timmer: Client charged with resisting arrest (2 priors). Trial before Judge Seidel ended August 19. Defendant found guilty. Prosecutor D. Penilla.

August 19

Brent E. Graham: Client charged with aggravated assault (2 counts) and unlawful flight (1 count). Trial before Judge Campbell ended August 22. Defendant found guilty. Prosecutor L. Tinsley.

August 20

Kevin L. Burns: Client charged with sale of narcotic drugs (2 counts). Trial before Judge Fidel. Defendant found not guilty of count 1. Jury hung (11 to 1 not guilty) on count 2. Prosecutor R. Knapp.

Thomas J. Murphy: Client charged with sale of narcotic drug. Trial before Judge Katz ended August 26. Defendant found guilty. Prosecutor J. Martinez.

Wesley E. Peterson: Client charged with sale of narcotic drug with priors (3 counts). Trial before Judge Grounds ended August 21. Defendant found guilty. Prosecutor Winter.

August 21

James P. Cleary: Client charged with possession of dangerous drug with 1 prior. Trial before Judge Friedl. Defendant found guilty (prior dismissed). Prosecutor B. Winter.

J. Scott Halverson: Client charged with aggravated DUI. Trial before Judge Hendrix ended August 29. Defendant found guilty. Prosecutor Miller.

August 22

Jerry M. Hernandez: Client charged with public indecency with a minor. Trial before Judge Pro Tempore James Martin ended August 23. Defendant found not guilty. Prosecutor R. Campos.

William A. Peterson: Client charged with trafficking in stolen property. Trial before Judge Galati. Defendant found not guilty. Prosecutor J. Grimley.

Jeffrey L. Victor: Client charged with child molestation (2 counts). Trial before Judge Ryan. Defendant found not guilty on both counts. Prosecutor B. Jorgensen.

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Charles N. Vogel: Client charged with leaving the scene of an accident. Bench trial before Judge Brown. Defendant found not guilty. Prosecutor J. Bernstein.

August 26

Lawrence H. Blieden: Client charged with sexual abuse and kidnapping. Trial before Commissioner Jones. Defendant found guilty. Prosecutor J. Bernstein.

Eric G. Crocker: Client charged with theft of a motor vehicle. Trial before Judge Fields ended August 29. Defendant found not guilty. Prosecutor M. Barry.

August 28

Susan Corey: Client charged with armed robbery. Trial before Judge Hilliard ended with a hung jury (6 to 2 not guilty). Prosecutor J. Duarte. ^

ARIZONA ADVANCED REPORTS

Volume 91

State ex rel Neely v. Sherrill

91 Ariz. Adv. Rep. 14, July 16, 1991 (S.Ct.)

The defendant is charged with armed robbery. An allegation of a prior conviction is filed. The defendant absconds and trial is held in absentia. The jury finds that the defendant committed the new charge. The state moves for permission to try the prior conviction to another jury after the defendant is apprehended. The state argues that the defendant's absence prevented it from proving that defendant was the person who had previously been convicted. While A.R.S. Section 13-604(K) and Rule 19.1 of the Rules of Criminal Procedures suggests that the same jury should hear this issue, neither requires that it be the same jury. If the State is not at fault in creating the need for a new jury, the statute and the rule do not prohibit the use of a second jury to try the prior conviction. Although the State can prove a prior conviction without the defendant's presence, the defendant's identification provides the best evidence of whether or not defendant was in fact the person previously convicted. The State should not be deprived of the best evidence for proving the prior conviction by the defendant's unlawful flight.

Defendant also contends that trial to a second jury violates double jeopardy principles. While the defendant has a right to try both the substantive charge and the prior conviction allegation to the same jury, the defendant cannot legitimately invoke that right where he absconds before or during trial. Further, the double jeopardy clause is not violated by impaneling a second jury. The double jeopardy clause provided three distinct guarantees to a criminal defendant: 1) Freedom from reprosecution following acquittal. 2) Freedom from reprosecution following conviction. 3) Freedom from multiple punishments for the same offense. Here the State has only one trial at which it has only one chance to prove the prior convictions. The double

jeopardy clause does not prohibit trying the issue of prior convictions to a separate jury at a later time. Allowing the State one attempt to prove the prior convictions is not fundamentally unfair to the defendant.

State ex rel Romley v. Brown

91 Ariz. Adv. Rep. 72, July 23, 1991 (Div. 1)

The defendant drove his automobile through an intersection into the path of a motorcycle. The motorcyclist died and the defendant was also injured. The defendant was treated at a local hospital approximately two hours after the accident. Blood was drawn for medical purposes. The police obtained a portion of the blood sample. The defendant's BAC was .112 at the time the blood was drawn. The defendant was charged with reckless manslaughter. The State moved to introduce the blood test results without relating back the defendant's blood alcohol content at the time of driving. The trial judge denied the motion and permitted the State to use the blood test results only to show the presence of alcohol in the defendant's system at the time of the test. Evidence of the amount of alcohol in defendant's system was relevant to the defendant's mental state. The State is not required to relate back the reading to the time of driving under Desmond v. Superior Court, 161 Ariz. 522 before it is admissible. Relation back evidence is only necessary for the State to receive the statutory presumption of intoxication or to establish a prima facie case under former A.R.S. Section 28-692(b). In a prosecution for reckless manslaughter, a defendant's BAC at the time of the accident is relevant evidence. However, it is not an essential element of the offense as defined by the statute and is not required. The burden of producing relation back evidence now lies with the defendant in this case. [Represented by Roland J. Steinle, MCPD].

State v. Beckerman

91 Ariz. Adv. Rep. 67, July 18, 1991 (Div. 1)

At sentencing, the defendant was ordered to pay a fine, a felony assessment and an \$8 time payment fee pursuant to A.R.S. Section 12-116 if the defendant was unable to pay the total amount on the date of sentencing. Defendant claims that the \$8 time payment fee punishes only those with the inability to pay and violates the equal protection clause. The equal protection clause guarantees like treatment to all persons who are similarly situated. However, the State may treat different classes of people in different ways as long as the classification is reasonable. The \$8 fee is an administrative processing fee and is rationally related to the legitimate state interest of facilitating collections. It does not violate the equal protection clause. [Represented by Paul C. Klapper, MCPD].

(cont. on pg. 9)

State v. Conroy

91 Ariz. Adv. Rep. 7, July 11, 1991 (S.Ct.)

The defendant waived his right to a trial by jury. The trial judge asked him questions concerning the voluntariness of his decision, and informed him that if convicted, he would be ineligible for parole until he had served one-half of his prison term. In reality, the defendant was only parole eligible after two-thirds of his prison term. When the trial judge learned that it had given defendant incorrect parole eligibility information, the court then advised defendant of the correct information. The defendant claimed that he would not have waived a jury trial if he had been correctly informed. After hearing argument, the judge denied defendant's motion to withdraw his waiver of a jury trial. The judge subsequently found defendant guilty as charged.

Defendant argued that the trial judge is required to give all the information required by Rule 17.2 where a defendant waives his right to a jury trial. The knowing, voluntary and intelligent waiver standard applies to all waivers of a jury trial. However, whether that standard has been satisfied depends upon the particular constitutional right being waived. Where a defendant submits the issue of his guilt or innocence to the judge on a stipulated record, the entire Boykin litany is required. On the other hand, where the defendant's case involves just a waiver of the jury and a full trial with testimony is had, information concerning sentencing is not necessary to secure a valid waiver of the right to a jury trial. In this case, the defendant's knowledge concerning parole eligibility had no bearing on the narrow issue of trial by judge or jury, especially where the waiver of the jury had no effect on his parole eligibility date.

State v. Howard

91 Ariz. Adv. Rep. 52, July 11, 1991 (Div. 1)

The defendant was convicted of aggravated assault and ordered to pay over \$100,000 in restitution. This amount included \$17,500 estimated for the victim's future medical care and \$12,000 for the victim's estimated future lost wages. Defendant alleges that it was error to order restitution for losses yet to be incurred at the time of sentencing. Defendant contends that projected future expenses are excluded under the definition of economic loss in A.R.S. Section 13-105[11] which uses the word "incurred". The legislature's enactment of the mandatory restitution statute reflects its sense of responsibility for victims. The purpose of mandatory restitution is to make the victim whole, not to punish. The full amount of a victim's economic loss includes not only those losses incurred at the time of sentencing but also those losses reasonably anticipated to be incurred in the future as the result of the defendant's actions. [Represented by Paul C. Klapper, MCPD].

State v. Lavers

91 Ariz. Adv. Rep. 38, July 23, 1991 (S.Ct.)

The police are called to a potential hostage/murder scene. The police obtain a search warrant for any and all evidence relating to the homicide. The search warrant also authorized

seizure of certain weapons, documents and photographs. Defendant claims the warrant was vague and overbroad. The warrant was not unconstitutionally overbroad because it only authorizes the police to search for and seize evidence relevant to the crime identified in the warrant.

Defendant also claims that the police exceeded the scope of the search warrant by seizing and playing a tape before they knew it had evidentiary value. Defendant failed to argue this point in the trial court and has waived it absent fundamental error. It was reasonable for the police to conclude that the tape recording was a container that may conceal evidence authorized by the warrant. The recording could be played immediately, without the need for an additional warrant. Once the agents were justified in seizing the tape, no additional authority was necessary to play the tape.

At trial, a tape made by the victim during her murder was introduced. Defendant claims there was insufficient foundation for the tape and that it was hearsay. The trial judge must be satisfied that the recording is accurate, authentic and generally trustworthy. Because this tape was not made by government agents but by a victim and was found in defendant's apartment, the trial judge did not abuse her discretion. Admission of the tape recording also did not violate the defendant's confrontation rights. To be admissible, the declarant must be unavailable and the statement must be reliable. None of the declarants on the tape were available at trial and the circumstances surrounding the creation of the tape established its reliability. Defendant's confrontation rights were not violated.

Defendant was charged with knowingly committing first degree murder. A.R.S. Section 13-1105 can be committed either intentionally or knowingly. The State may elect to charge knowing homicide rather than intentional homicide, even if done to preclude evidence of defendant's intoxication.

During jury selection, one juror indicated his desire to be a good juror but acknowledged that news reports he had seen would "haunt his memory". Rule 18.4 requires the trial court to excuse a juror for cause when there is reasonable ground to believe that a juror cannot render a fair and impartial verdict. The juror testified that he could decide the case based solely upon the evidence admitted at trial. No abuse of discretion has been shown.

The Supreme Court reviewed the aggravating and mitigating circumstances for the death penalty. The murder of the teenage victim was cruel because she suffered mental anguish. The older victim's physical and emotional suffering also supports a finding of cruelty. The murders of the victims were also committed during the commission of each offense. The Supreme Court found that mental impairment and intoxication were insufficient mitigating circumstances. The Supreme Court also found that the prosecutor did not abdicate his responsibility by making the wishes of surviving relatives a factor in the decision to seek the death penalty.

(cont. on pg. 10)

State v. White

91 Ariz. Adv. Rep. 19, July 16, 1991 (S.Ct.)

Defendant is convicted of murder and conspiracy to commit murder and sentenced to death. He requested that the jury be instructed not to consider the co-conspirator's statements unless 1) the jury determines from independent evidence that a conspiracy exists, 2) the statement was made while the co-conspirator was participating in the conspiracy, 3) the statement was made before or during the time the defendant participated in the conspiracy and 4) the statement furthered the conspiracy. The trial judge is not required to instruct the jury this way. The trial judge makes a prima facie determination of whether a conspiracy exists and whether the statements are in furtherance of the conspiracy before the evidence is presented to the jury. The judge determines whether the statements are admissible, not the jury. The jury only determines the weight and credibility of the co-conspirator's statements. The requested instruction permitted juror evaluation of the admissibility of evidence and was properly refused.

Defendant claims that the trial judge erred in admitting a number of hearsay statements. Statements of a co-conspirator in the course of a conspiracy are not hearsay. Rule 801(d) Arizona Rules of Evidence. Defendant also claims that the conspiracy ended when the victim died. However, the object of the conspiracy was not simply to kill the victim but also to collect life insurance proceeds.

During the trial, defendant's former wife was allowed to testify that defendant had another wife at the time he married her. Defendant claims his bigamy was an inadmissible prior bad act. The court agrees that defendant's bigamy was irrelevant to the charge and was erroneously admitted. However, the error is found to be harmless because the other evidence against defendant proves beyond a reasonable doubt that he would have been convicted anyway.

Defendant argues that the cumulative errors at trial require a new trial. The Arizona Supreme Court refuses to recognize any cumulative error theory.

Defendant claims that jury instruction on first degree murder, conspiracy to commit murder, aiding and abetting, and accomplice liability violate double punishment principles because the definitions of aiding and abetting and conspiracy overlap. Defendant claims that it is impossible to be a conspirator without being an aider where the underlying crime is eventually committed. Because A.R.S. Section 13-116 only applies if the defendant is punished for the same offense, no violation occurred here. If the defendant had received life on both counts, conspiracy and aiding and abetting might have been a problem when used to punish one crime twice. The death penalty is defendant's sole punishment and no double punishment problem exists.

Defendant claims that he was denied due process of law because he was incompetent during the appeals process. A criminal appeal will proceed even if the appellant is incompetent to assist counsel. In general, appellate litigants do not participate in appeal proceedings. Any question of the defendant's mental incompetency during the appeal does not deny him due process of law.

During the voir dire examination, the jury was questioned regarding capital punishment. Defendant claims that the jurors were death qualified, denying his right to an impartial

jury. The jurors can be properly asked their views about capital punishment and whether it would prevent or substantially impair the performance of their duties. No juror was disqualified and no error occurred.

Reviewing the death penalty, the court finds the murder was for pecuniary gain. The only valid mitigating circumstance was lack of a prior criminal record, and that was found insufficient to warrant leniency. Defendant also claims that he is the victim of sex discrimination because no women have been sentenced to death even though women commit ten percent of all homicides in Arizona. (Note: Since the imposition of the death penalty in this case, a woman has been sentenced to death). The statute is gender neutral and the death sentence is determined on a case by case basis. The court also finds that the death penalty is constitutional and appropriate in this case. In a special concurrence, two judges write that it is not necessary to conduct a comparative proportionality review of the death sentence, arguing that comparative proportionality review serves no principled purpose and should be discontinued.

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State v. Brown

92 Ariz. Adv. Rep. 38, August 6, 1991 (Div. 1)

Defendant pled guilty to a class 6 undesignated offense. He was put on intensive probation with shock incarceration. He received a potential jail term of 195 days as part of the terms of his probation. Defendant claims that his incarceration was excessive because it was greater than the maximum six months authorized for a class 1 misdemeanor. An undesignated offense shall be treated as a felony for all purposes until such time as the court actually enters an order designating the offense a misdemeanor. One year of incarceration is authorized as a condition of felony probation. [Represented by Garrett W. Simpson, MCPD].

State v. Clough

92 Ariz. Adv. Rep. 35, August 6, 1991 (Div. 1)

Defendant was charged with burglary and theft. He was on probation from Montana for issuing a bad check. His Montana conviction was a prior felony offense because it was a felony in Montana and could have been charged as either a felony or a misdemeanor offense had it happened in Arizona. A.R.S. Section 13-604 refers to the maximum punishment that might be imposed for the conduct involved. The defendant's Montana conviction could be used to enhance the defendant's Arizona sentence.

Defendant claims it was error to treat this as an offense while on felony probation under A.R.S. 13-604.02(B) because the offense could have been a misdemeanor under Arizona law. The offense was a felony in Montana and could have been charged as a felony in Arizona.

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At sentencing, the judge gave the defendant an aggravated sentence because of the defendant's prior record, because he was on release for another conviction and because he could not make the Arizona sentence consecutive to any sentence defendant might get as a result of the revocation of his Montana probation. The Court of Appeals finds nothing improper with these aggravating circumstances.

Defendant contends that his Montana prior could not be used to impeach his testimony because it would not necessarily be a felony in Arizona. Rule 609(A) allows impeachment with a conviction if the crime was a felony where committed. Further, Rule 609(A) also permits the use of a misdemeanor conviction for impeachment purposes if the crime involved dishonesty or a false statement. Issuing a bad check involves falsification and untruthfulness.

State v. Morales

92 Ariz. Adv. Rep. 47, August 8, 1991 (Div. 2)

Defendant drove the wrong way on the freeway and caused the death of two other motorists in a head-on collision. He was charged with two counts of manslaughter and one misdemeanor count of driving under the influence. Defendant was treated at the hospital, where the police obtained a portion of the defendant's blood sample. Defendant claims that the use of his hospital records to prove that it was his blood violates the physician/patient privilege. Because he was unconscious when admitted to the hospital, defendant was treated under a code name. The blood sample was marked only with the code name assigned by the hospital. The hospital medical records were necessary to prove that the sample marked with the code name came from the defendant. A.R.S. Section 13-4062[4] is not violated by introduction of the records showing his code name. The information did not come from a physician but rather from a custodian of records. The information was not necessary for treatment and the code name was not given to the defendant by his physician but rather by the hospital. The code name was not information protected by the physician/patient privilege.

Defendant contends that the use of the hospital records to prove the identity of the coded sample constitutes double hearsay and violates his confrontation rights. The hospital records satisfy the requirements of the business record exception of Rule 803(6) of the Arizona Rules of Evidence. The hospital's policies also indicate sufficient reliability. His right to confrontation was also not violated. The custodian of records and other hospital personnel were available for cross examination. Although the identity of the person who actually made the record was not known, he could have cross-examined the hospital employees about their regular procedures.

Defendant contends that the State's chain-of-custody of the blood sample was defective. Not every person in the chain-of-custody needs testify for the item to be admissible. Defendant has not established that there was any likelihood of tampering and any flaws in the chain-of-custody go to the weight given to the evidence, not its admissibility.

In post-conviction proceedings, defendant claims he received ineffective assistance because his lawyer failed to present mitigating evidence. Defendant's post trial evidence

that he suffers from Post Traumatic Stress Disorder was presented to the trial court in the presentence report. The trial judge further ruled that this would not have affected sentencing. Post-conviction relief was properly denied.

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State v. Hernandez

93 Ariz. Adv. Rep. 39, August 22, 1991 (Div. 1)

Defendant was convicted of first degree murder and sentenced to life imprisonment. At trial, the prosecutor struck the only Hispanic juror. The prosecutor answered the defendant's Batson motion by noting the juror's unstable unemployment history, her overly enthusiastic responses to questions, her potential sympathy problems and a concern that she worked too many hours to be an alert juror. The trial judge noted the truth of some of these observations and found the prosecutor's reasons were not racially related. The reasons given by the prosecutor constituted a sufficiently neutral rebuttal. An unstable employment history is proper grounds to exercise a preemptory strike. While other jurors who were not stricken had similar employment histories, the dynamics of the jury selection process makes comparison analysis difficult on a cold appellate record. An overly enthusiastic response is also a properly race-neutral reason. The court concurred with the prosecutor's evaluation of the response and no abuse of discretion appears. As to sympathy, perceived sympathy towards the defendant is a legitimate basis for a preemptory strike. Finally, striking a prospective juror because of perceived or anticipated fatigue is also acceptable.

At trial, a witness testified that he heard an unknown person threaten the victim. This witness passed this information along to the bartender, who passed it along to the victim. The statement was not hearsay because it was not offered as proof of the matter asserted. The words were offered to prove their effect upon the hearer. The testimony explained why the witness spoke with the bartender, why the bartender warned the victim and why the victim left the bar. It also further explained the witness's later conduct in observing the homicide. Defendant also claims that this hearsay evidence violated his confrontation rights. Defendant did not object to the testimony on this basis and waived the issue absent fundamental error. Further, testimony not admitted to prove the truth of the matter asserted does not violate the confrontation clause.

Defendant also claims that the hearsay testimony should have been kept out because it proves premeditation. Defendant did not object at trial on this basis and waived the issue on appeal. Further, the witness's statements were admitted to show the effect of the words upon the hearer. They were not admissible solely for a limited purpose like impeachment and did not implicate the defendant. No error occurred.

(cont. on pg. 12)

Defendant claims the prosecutor committed misconduct by stating to the jury that "You don't charge murder unless you have the proof and the evidence to back it up." While the prosecution is not allowed to vouch for the strength of the State's case, the statement was made to explain why a different person was not charged, as opposed to explaining why the defendant was charged. While this constitutes vouching for the other witness, there was no objection to the comment and is not reversible error. Defendant also claims that the prosecutor improperly commented that the defendant would not be here if he had not shot and killed the victim. The comment was made in rebuttal to the defense counsel's closing argument if no one had gotten intoxicated that night none of this would have happened. The prosecutor also reminded the jury that his comments were not evidence and that his opinions did not count.

State v. Lewis

93 Ariz. Adv. Rep. 4, August 13, 1991 (Div. 1)

Defendant was convicted of two counts of first degree murder and two counts of kidnapping. The evidence at trial showed that defendant and two others beat two men into submission, tied them up, drove them to an isolated area and killed them. The jury was instructed on both felony murder and kidnapping. Defendant contends that kidnapping cannot serve as a basis for felony murder because one of the elements of kidnapping is that the restriction was with the intent to inflict death or physical injury. Defendant claims this makes it the same as premeditated first degree murder, an offense for which the jury did not convict the defendant. While infliction of physical injury will not itself support a felony murder charge, one who knowingly restrains a victim with the intent to inflict such injury commits kidnapping and the felony murder rule applies. The jury was properly instructed that kidnapping can serve as a basis for a felony murder conviction.

The jury was instructed that the third element of kidnapping is that the restriction was with the intent to inflict death or physical injury on the person. The jury was also instructed on accomplice liability. During deliberation the jury sent a note inquiring "Can a person by being an accomplice satisfy the third requirement of the kidnapping charge?". The jury was instructed to consider the instructions previously given. Defendant claims it was error not to give a further instruction requested by counsel. The instructions originally given were correct and adequate. No further instruction was required.

Defendant argues that the trial judge erroneously found an aggravating factor for the death penalty. As the trial judge imposed a life sentence, the aggravating factor problem is no longer relevant. ^

Arizona Advanced Reports case summaries are written by Robert W. Doyle and prepared for use by Maricopa County Public Defenders.

TRAINING CALENDAR

October 04

Arizona State Bar's presentation of "Jury Psychology: What You Say vs. What They Hear". This seminar will be held all day at the Phoenix Mountain Preserve Reception Center.

October 11

Arizona Attorney General's Office presentation of "Not Guilty by Reason of Insanity". This seminar will be held from 3:00 p.m. to 4:30 p.m. in the Maricopa County Board of Supervisors' Auditorium.

October 18

Maricopa County Public Defender's Office and County Attorney's Office presentation of "Sentencing in the 90's: The Need for Alternatives". This seminar will be held from 8:30 a.m. to 5:00 p.m. at the Hyatt Regency.

November 02

Arizona State University College of Law's presentation of "DNA Identification Technologies and the Law". This seminar will be held from 9:00 a.m. to 5:00 p.m. at the ASU College of Law.

November 04

Maricopa County Public Defender's New Attorney Training. Training for new attorneys employed by the office begins.

November 15

Maricopa County Public Defender's Office presentation of "Criminal Law Motion Practice: Is the Pen Mightier Than the Sword?". This seminar will be held from 9:00 a.m. until 5:00 p.m. at the Downtown Phoenix Sheraton Hotel. ^

PERSONNEL PROFILES

Robin Allen, a former Deputy Public Defender (1974-76), started with our SouthEast Juvenile Division on September 16. Admitted to practice in 1973, Robin obtained his law degree that same year from Pepperdine Law School in California. Robin left a general law practice with Allen & Simon of Mesa to rejoin our office.

Mary Atkinson joined our Records Section as an aide on September 03 after working in retail services.

Stephanie Christie began employment as Trial Group A's office aide on September 09. Stephanie replaces Heidi Hostetler who is switching to part-time work as an aide for Administration and Records.

Nora Greer (formally in Trial Group B) came back from leave on September 23. Nora will handle all "Not Guilty" arraignments. Beginning October 01, Nora also will handle Rule 11's.

Carole Larsen-Harper will begin work at our office on November 04. Admitted to the Arizona State Bar in 1990, Carole received her law degree from Arizona State University the same year. Additionally, Carole has held a private investigator's license since 1984. She joins our office after leaving her position as associate at Fennemore Craig.

Peggy LeMoine will start employment here on October 21 as a law clerk until November 04 when she assumes her position as attorney. Peggy obtained her law degree in 1990 from Arizona State University. She served as a law clerk at the Arizona State Court of Appeals and at the Arizona Center for Law in the Public Interest.

Emmet Ronan, a renowned veteran of the Maricopa County Public Defender's Office (1974-82), returned to the fold and started with Trial Group D on September 09. Emmet, who received his law degree from Arizona State University, left private practice as a partner at Henze, Ronan & Clark to rejoin us. ^

BULLETIN BOARD

Be prepared! On October 26 the county's main telephone system will have a new prefix

"506-"

and it will replace the 233, 256, 261, 262, 269, 440 and 495 prefix's. All suffix's will remain as they are now. The prefix change will not affect County Health Services (our Mental Health attorneys) the Sheriff's Office, Auto License or other outlying county facilities.

A recording will advise callers of the change for one year after it goes into effect.

* * * * *

SPEAKERS' BUREAU

Our office is in the process of establishing a Speakers' Bureau so that we will have a ready list of attorneys who are willing to speak to various groups on the subject of the Public Defender's Office and related legal issues. If you are interested in participating, please contact Georgia Bohm in our Training Section.

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SUBSCRIPTIONS

FOR THE DEFENSE, Copyright, a Maricopa County Public Defender's Office monthly Training Newsletter. A limited number of subscriptions are available at \$15.00 per year, for a subscription period of October 01 through September 30. For information, please telephone the staff at (602) 495-8200.